

§ 1061.8 Information on the heightened degree of protection afforded.

An application for an exemption from preemption shall also contain information demonstrating that the State or local requirement provides a significantly higher degree of protection from the risk of injury or illness than the preempting Commission statute, standard, or regulation. More specifically, an application shall contain:

- (a) A description of the risk of injury or illness addressed by the State or local requirement.
- (b) A detailed explanation of the State or local requirement and its rationale.
- (c) An analysis of differences between the State or local requirement and the Commission statute, standard, or regulation.
- (d) A detailed explanation of the State or local test method and its rationale.
- (e) Information comparing available test results for the Commission statute, standard, or regulation and the State or local requirement.
- (f) Information to show hazard reduction as a result of the State or local requirement, including injury data and results of accident simulation.
- (g) Any other information that is relevant to applicant's contention that the State or local requirement provides a significantly higher degree of protection than does the Commission statute, standard, or regulation.
- (h) Information regarding enforcement of the State or local requirement and sanctions that could be imposed for noncompliance.

§ 1061.9 Information about the effect on interstate commerce.

An application for exemption from preemption shall provide information on the effect on interstate commerce a granting of the requested exemption would be expected to cause, including the extent of the burden and the benefit to public health and safety that would be provided by the State or local requirement. More specifically, applications for exemption shall include, where available, information showing:

- (a) That it is technologically feasible to comply with the State or local re-

quirement. Evidence of technological feasibility could take the form of:

- (1) Statements by affected persons indicating ability to comply with the State or local government requirement.
- (2) Statements indicating that other jurisdictions have established similar requirements that have been, or could be, met by persons affected by the requirement that is the subject of the application.
- (3) Information as to technological product or process modifications necessary to achieve compliance with the State or local requirement.
- (4) Any other information indicating the technological feasibility of compliance with the State or local requirement.

(b) That it is economically feasible to comply with the State or local requirement, i.e., that there would not be significant adverse effects on the production and distribution of the regulated products. Evidence of economic feasibility could take the form of:

- (1) Information showing that the State or local requirement would not result in the unavailability (or result in a significant decline in the availability) of the product, either in the interstate market or within the geographic boundary of the State or local government imposing the requirement.
- (2) Statements from persons likely to be affected by the State or local requirement concerning the anticipated effect of the requirement on the availability or continued marketing of the product.
- (3) Any other information indicating the economic impact of compliance with the State or local requirement, such as projections of the anticipated effect of the State or local requirement on the sales and prices of the product, both in interstate commerce and within the geographic area of the State or local government.

(c) The present geographic distribution of the product to which the State or local requirement would apply, and projections of future geographic distribution. Evidence of the geographic distribution could take the form of governmental or private information or data (including statements from